

REMARKS

Claims 35-54 are pending. Claims 36-37, 39-31, 44-45 and 47-54 were indicated as allowable in the Office Action. Independent claims 35 and 43 have been amended to clarify the scope of the inventions defined by these claims. Formerly dependent claims 40 and 44 have been rewritten in independent form with no narrowing amendments intended for the scope of those inventions. Formerly dependent claim 39 has been rewritten in independent form incorporating the limitations of independent claim 35, but not of dependent claim 38, and thus the scope of this invention has been broadened. Independent claim 47 has been amended to broaden the claim. No new matter has been added.

Specification

The abstract of the disclosure has been amended in accordance with the recommendations in the Office Action. No new matter has been added.

Section 102

Claims 35, 38 and 43 were rejected as being anticipated by Hofmann et al. This rejection is respectfully traversed.

It is respectfully submitted that a *prima facie* case of anticipation over Hofmann et al. has not been established. The buttress plate (18) in Hofmann et al. which is indicated in the Office Action as purportedly corresponding to the claimed implant (Office Action pg. 4) is actually positioned on the side of the tibia as part of an osteotomy procedure in which the cut surfaces of the wedge shaped cuts are intended to be drawn closed to each other. (See, e.g., Fig. 30 of

Hoffman et al.). Accordingly, the step of implanting an implant “on the at least one resected surface” as recited in independent claims 35 and 43 is not shown in Hoffman.

With respect to independent claim 35 and 43, the claimed invention for these claims has been clarified to specifically recite a knee arthroplasty implant. It is respectfully submitted that the “Prior Art” section of Hoffman et al. specifically teaches that an osteotomy procedure is significantly different from an arthroplasty procedure as is now claimed for the inventions of claims 35 and 43.

It has been known that it is possible to correct certain bone-related problems by removal of a wedge of the bone so as to realign the remaining segments thereof. This osteotomy technique can serve to bring anatomic and mechanical axes together at the joint for relief of gonarthrosis, for example. This operation is usually performed adjacent the end of a bone, such as in the head of the tibia, without removing the end surface or entire head, as would be the case for preparation of the bone for implantation of a total joint prosthesis, such as a total knee prosthesis. It is important that the operation be performed with a high degree of accuracy so that the end surface of the bone is not damaged and is subsequently correctly realigned to the desired orientation with respect to the alignment of the anatomic and mechanical axes of the bone. In many ways this type of operation is much more difficult to perform than preparation for a total prosthetic implant, since engaging surfaces of the bone are to be left in place in an undamaged but realigned position. (Hofmann, Col. 1, Lines 10-28)

### Section 103

Claims 42 and 46 were rejected as obvious over Hofmann et al. in view of Fargie et al. These rejections to dependent claims are traversed for the reasons set forth above with respect to the underlying independent claims 35 and 43.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BRP', followed by a long horizontal line extending to the right.

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